

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1275 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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JAHURANBIBI GULAMHUSSAIN KHALIFA, - Petitioner(s)

Versus

ABDULJALIL ABDULRAHIM & 3 - Respondent(s)

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Appearance :

MR AR MAJMUDAR for Petitioner No(s).: 1 - 1.

RULE SERVED for Respondent No(s).: 1, 2,3.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 04/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 18th October, 1994 passed by the learned Assistant Judge, Vadodara in Civil Appeal No.280/1985, the appellants (the heirs and legal representatives of the defendant in Rent

Suit No.41/1979) have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, "**the Rent Act**").

The defendant was a tenant in the suit shop, part of the house bearing Municipal Census No.12/60 situated at Vadodara, for a monthly rent of Rs.90=00. The suit house belonged to one Haji Rajebhai Jamalbhai. Under the gift deed made by the said Haji Rajebhai the respondents-plaintiffs became the owners of the suit house. The plaintiffs instituted Rent Suit No.41/1979 in the Court of Small Causes, Vadodara for recovery of possession of the suit shop on the ground that the defendant was the tenant in default and was in arrears of rent since 9th December, 1976. The suit was contested by the defendant vide written statement Exh.13. The defendant denied that the plaintiffs were the owners of the suit house and were the defendant's landlords. It was stated that the gift deed made in favour of the plaintiffs was challenged in Regular Civil Suit No.643/1976 and the plaintiffs in the said suit had, on 24th July, 1978, given notice to the defendant not to pay rent of the suit shop. The defendant

also raised dispute as to the standard rent of the suit shop. The defendant also questioned the maintainability of the suit.

The learned trial Judge held that even in case the challenge to the gift deed were upheld, the plaintiffs had a share in the suit house. The plaintiffs were, therefore, competent to bring the suit for eviction; that the agreed rent of Rs.90=00 was the standard rent of the suit shop; that pending the aforesaid Civil Suit No.643/1976, by order made below application Exh.13, the plaintiffs were permitted to recover rent of the suit shop. The defendant was held to be entitled to protection under Section 12(3)(b) of the Rent Act. The defendant was found to be in arrears of rent since 9th December, 1976 as alleged. Pending the suit the defendant did not pay the rent or tender the rent in the Court. The defendant had thus forfeited right to protection conferred by Section 12(3)(b) of the Rent Act. The learned trial Judge, by judgment and order dated 19th October, 1985, passed decree for possession and for recovery of a sum of Rs.8,550=00, the amount of arrears of rent. The defendant was granted time to pay or deposit the amount of rent

due. By further order dated 28th October, 1985 the learned trial Judge observed that the defendant had not paid or deposited the rent as directed. He had not remained present. It was conveyed by the learned advocate that the defendant did not propose to deposit any rent. In that view of the matter the learned trial Judge was pleased to pass decree for eviction against the defendant. Feeling aggrieved, the defendant preferred Civil Appeal No.280/1985 in the Court of District Judge, Vadodara. The learned Assistant Judge, by judgment and order dated 18th October, 1994, dismissed the Appeal. Therefore, the present Revision Application.

The lower appellate Court has confirmed the finding that the defendant was not ready and willing to pay the rent. It has been observed that pending the suit the defendant did not pay the rent. After passing of the decree, pending the Appeal also the defendant did not pay any rent. On the date of the order the defendant was in arrears of rent of Rs.18,180=00. The above facts are not disputed in the present Revision Application.

In view of the above facts, I am of the opinion

that the defendant had, by not complying with the conditions mentioned in Section 12(3)(b) of the Rent Act, forfeited right to protection against eviction conferred by Section 12(3)(b) of the Rent Act. No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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